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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.

Plaintiff, Counter-defendant
v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF MARK A. PERRY IN
SUPPORT OF APPLE INC.'S STATEMENT
IN SUPPORT OF ADMINISTRATIVE
MOTION TO SEAL**

The Honorable Thomas S. Hixson

1 I, Mark A. Perry, hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar
3 of this Court. I am a partner at the law firm Weil, Gotshal & Manges LLP, counsel of record for Apple
4 Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential
5 information based on my personal experience representing Apple. I have personal knowledge of the
6 facts stated below and, if called as a witness, would testify competently thereto. I submit this declaration
7 in support of Apple’s Statement in Support of Administrative Motion to Seal.¹

8 2. I am aware that the law of this Circuit allows information to be filed under seal for good
9 cause or in certain compelling circumstances. I also understand that courts routinely seal filings where
10 documents include a company’s trade secrets, internal codenames, confidential research and
11 development, personally identifiable information, or other commercially sensitive information. I
12 understand that this Court has broad latitude to prevent the public disclosure of these categories of
13 commercially sensitive information.

14 3. Apple operates in an intensely competitive environment. Apple has serious and
15 legitimate concerns that competitors will be quick to capitalize on any release of Apple’s highly sensitive
16 information in order to gain competitive advantage. As such, Apple takes extensive measures to protect
17 the confidentiality of its information.

18 4. Apple has carefully reviewed the exhibits to Epic Games, Inc.’s Administrative Motion
19 to Consider Whether Another Party’s Material Should Be Sealed Pursuant to Civil Local Rule 79-5
20 (“Epic’s Motion”), Dkt. 1135, and now proposes to partially seal information therein that, if disclosed,
21 could harm Apple’s competitive business interests. Specifically, Apple seeks to seal Exhibits C–G in
22 their entirety and to partially seal Exhibit H.

23 5. Apple seeks to seal Exhibit C to Epic’s Motion because the document contains
24

25
26 ¹ Courts in the Ninth Circuit routinely grant motions to seal based on declarations of counsel. *See*,
27 *e.g.*, *In re Apple Securities Litigation*, 19-cv-02033-YGR, Dkt. 223 (N.D. Cal.); *In re Qualcomm Litig.*,
No. 17-cv-00108-GPC, Dkt. 398-1 (S.D. Cal. Mar. 26, 2018); *Avago Techs. U.S. Inc. v. Iptronics Inc.*,
No. 10-cv-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc. v. OpenTV Inc.*, No. 13-cv-
00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2013). If the Court deems this declaration insufficient, Apple
28 respectfully requests that it be permitted to file a further declaration supporting filing under seal.

1 confidential information regarding Apple's business and legal strategy in connection with the Injunction
2 issued in this lawsuit. In particular, Exhibit C is a draft of speaker notes for a presentation to the members
3 of the press in anticipation of a ruling from the Ninth Circuit in the appeal in this litigation. If disclosed,
4 the speaker notes could reveal Apple's assessment and analysis of the litigation beyond what was
5 actually shared with members of the press during the presentation. Most of the speaker notes relate to
6 comments intended to be made by Apple's in-house and outside counsel. Because the confidential
7 speaker notes comprise the entirety of Exhibit C, the exhibit should be withheld in its entirety.

8 6. Exhibits D and F are documents addressing Apple's compliance efforts in this litigation.
9 Exhibit D is an internal "Slack" discussion among non-lawyers and in-house counsel regarding
10 engineering issues related to Apple's compliance efforts in November 2021. That discussion relates to
11 certain Injunction compliance efforts that ultimately were never realized (because the Injunction was
12 subsequently stayed pending appeal) and thus were never made public. Disclosure would reveal Apple's
13 non-public business and legal strategy regarding its initial Injunction compliance plans and efforts.
14 Exhibit F is an extensive slide deck presented to senior-level decisionmakers by in-house counsel and
15 non-lawyers regarding potential business models and legal options for complying with the Injunction in
16 this litigation. Disclosure of this document would reveal non-public information about Apple's business
17 and legal assessments of its Injunction compliance options and efforts, and would provide an advantage
18 to Apple's competitive rivals. Because these business and legal analyses permeate the documents, the
19 exhibits should be withheld in their entirety.

20 7. Exhibits E and G are documents related to Apple's regulatory compliance plans and
21 analyses in the Netherlands and the European Union. Exhibit E is a slide deck providing a number of
22 options for Apple's compliance with regulatory changes in the Netherlands relating to dating apps.
23 Exhibit G is a "Quip" document summarizing various considerations related to the monetization model
24 for new App Store features in the European Union. Both of these documents reflect discussions of
25 business strategy and analyses related to ongoing regulatory compliance issues. They contain sensitive,
26 non-public information regarding Apple's analysis of options for complying with new regulations and
27 of the commercial implications of those various options. Because these business and legal analyses
28

permeate the documents, the exhibits should be withheld in their entirety.

8. Apple seeks to partially seal Exhibit H to Epic's Motion because the document contains competitively sensitive, non-public information regarding Apple's engagement of outside counsel in connection with this litigation, as well as Apple's use of certain confidential codenames related to new product developments. Public disclosure would reveal Apple's internal business decision-making, which could be used by competitors to gain an unfair competitive advantage over Apple. Exhibit H also contains personally identifiable information in the form of email addresses of Apple employees. Apple has narrowly-tailored its sealing request as to maximize the public's access to court documents without jeopardizing Apple's business interests. The remainder of Exhibit H remains unredacted.

9. Below is a chart detailing the portions of the exhibits sealable for the reasons explained herein, as well as in Apple's statement.

Portion of Document Sought to be Sealed	Document Title	Reason to Seal
Entirety of document	Exhibit C to Epic's Motion	Reflects non-public Apple business and legal strategy
Entirety of document	Exhibit D to Epic's Motion	Reflects non-public Apple business and legal strategy
Entirety of document	Exhibit E to Epic's Motion	Reflects non-public Apple business and legal strategy
Entirety of document	Exhibit F to Epic's Motion	Reflects non-public Apple business and legal strategy
Entirety of document	Exhibit G to Epic's Motion	Reflects non-public Apple business and legal strategy
Redacted email addresses in "Privilege Logs: Publicly Filed Documents"	Exhibit H to Epic's Motion	Reflects personally identifiable information
Redacted references to outside counsel in "Privilege Logs: Press Communications"	Exhibit H to Epic's Motion	Reflects non-public Apple legal strategy
Redacted word in third entry on "Privilege Logs: Scare"	Exhibit H to Epic's Motion	Reflects non-public Apple

Portion of Document Sought to be Sealed	Document Title	Reason to Seal
Screens”		business strategy
Redacted word in first entry on “Privilege Logs: Draft Decks”	Exhibit H to Epic’s Motion	Reflects non-public Apple business strategy
Redacted word in first entry on “Privilege Logs: Business Documents”	Exhibit H to Epic’s Motion	Reflects non-public Apple business strategy

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of February 2025, in Washington, D.C.

Dated: February 3, 2025

Respectfully submitted,

By: /s/ Mark A. Perry

Mark A. Perry